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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IRWIN GUZMAN,

Petitioner,

v.

SPEARMAN, Warden,

Respondent.

Case No.: 16cv2659-MMA (AGS)

**ORDER DECLINING TO ADOPT  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE TO  
DISMISS GROUND SIX OF  
PETITION**

[Doc. No. 22]


Petitioner Irwin Guzman, a state prisoner proceeding *pro se*, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (“Petition”). *See* Doc. No. 1. On July 13, 2017, the assigned magistrate judge issued an order to show cause as to Ground Five of the Petition, and further recommended the Court dismiss Ground Six of the Petition with leave to amend. *See* Doc. No. 22. The Court finds dismissal of Ground Six to be premature at this time. As an initial matter, the Court previously ordered Respondent to answer or otherwise respond to the Petitioner’s claims. *See* Doc. No. 14. The response deadline is currently set for August 18, 2017. *Id.* As such, Respondent has not had an opportunity to respond to the Petition. *See* 28 U.S.C. § 2243 (providing that a response to the petition is required if the court does not grant the writ or summarily dismiss the petition). Additionally, Respondent has not lodged with the Court all relevant

1 records. Further, the Court would prefer not to adjudicate Petitioner's claims on a  
2 piecemeal and ad hoc basis.

3 Accordingly, the Court **DECLINES** to adopt the magistrate judge's  
4 recommendation to dismiss Ground Six of the Petition.<sup>1</sup>

5 **IT IS SO ORDERED.**

6 DATE: July 14, 2017

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9 HON. MICHAEL M. ANELLO  
10 United States District Judge  
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27 <sup>1</sup> The Court notes that pursuant to the applicable rules, the parties were provided with fourteen  
28 (14) days to file any objections to the magistrate judge's recommendation. *See* Doc. No. 22. However,  
based on the Court's declination to adopt the recommendation to dismiss Ground Six, any such  
objections are rendered moot and no objection period is necessary.